the plaintiffs were released from all responsibilities to complete the remaining aluminium works for Stage III except as to the price thereof. If the answer is in the affirmative, obviously they could not be held responsible for any lack of progress in those works and the defendants could not therefore terminate their employment to complete the roadworks. I am of the view that the plaintiffs were on the true and natural construction of Clause 7 released from seeing to the progress of the remaining aluminium works for Stage III. Except for the pricing with regard to Stage III aluminium works for which the plaintiffs had to continue to be responsible, the aluminium works to be assigned to UCE were "the aluminium works which span both Stage III (New Treatment) Works and Stage II (Modification) Works." I cannot ignore these words and am constrained to give effect to them.

Accordingly, the defendants were wrong to have purported to terminate the contract by serving two notices on October 3, 1979 and October 17, 1979 which were based or grounded on the unsatisfactory progress of the remaining Stage III aluminium works.

If I am wrong in my interpretation of Clause 7, I go on to find that the progress of the balance of the aluminium works for Stage III was so unsatisfactory as to warrant a termintion of the sub-contract.

I now come to the reliefs claimed by the plaintiffs. Parties have agreed before me that assessment of the quantum and damages will be referred to arbitration. I declare that the defendants' purported termination of the sub-contract for the roadworks in Stage III unlawful. There will be judgment for the plaintiffs for work done and materials supplied up to the date of the wrongful termination and damages, if any, for the unlawful termination of the roadworks sub-contract. The plaintiffs are entitled to the refund of the retention monies said to be $259,471.33 which must be subject to assessment, if necessary, by the arbitrators. The defendants are, of course, entitled to set off the claims of the plaintiffs against the loan of $210,000 plus interest thereon at 9% per annum from the date of its disbursement. The defendants will have to pay the plaintiffs the costs of these proceedings.

(Court: Plaintiffs to be paid 60% of the taxed costs. Liberty to apply.)

Order accordingly.

Solicitors: *Yap & Yap; Donaldson & Burkinshaw.*

HIRENDRA LAL BANNERJI v. CHIN CHENG REALTY (PTE.) LTD.

[A.C.J. (Lai Kew Chai J.) October 9, 1985]
[Singapore – Civil Appeal No. 52 of 1982]

Practice and Procedure – Costs – Taxation – Question as to scale of costs applicable in taxation of costs which came up in August 1984 – Effect of R.S.C. (Amendment) 1982, r.11 – R.S.C. 1970, O.59 31(1), Appendix 1.

Interpretation – Construction of statutory enactment or statutory legislation – Construction according to intention expressed in legislation.

In this case three bills of costs were drawn up on the basis of the new scale of costs in Appendix 1 to Order 59 which came into operation on December 1, 1982. When the said bills of taxation came up for consideration before the Deputy Registrar, counsel for the defendants against whom the three bills of costs were raised, objected as a matter of principle and on a true and natural construction of Order 59 r.31(1) of the Rules of Supreme Court, 1970 and the 1982 Appendix 1 effective from December 1, 1982, *inter alia*, that all three bills of costs should have been drawn on the old and new scales of costs in such way as to reflect the work done before or on and after December 1, 1982. The learned Deputy Registrar agreed with the defendants and ordered that all three bills should be redrawn to reflect work done under the old and/or the new scales. The plaintiff appealed.

Held, allowing the appeal: on a true and natural construction of Order 59 r.31(1) of the R.S.C. 1970, the new scale of costs will have to be applied on a taxation of costs coming up for consideration on and after December 1, 1982 to all contentious business done on or after January 2, 1971.

Cases referred to:

(1) *The Direct United States Cable Co. Ltd.* v. *The Anglo-American Telegraph Co. Ltd.* (1877) 2 A.C. 394, 412.
(2) *Warburton* v. *Loveland* (1832) 2 D. & CL. (H.L.) 480, 489.
(3) *James Chia Shih Ching* v. *Law Society of Singapore* [1985] 2 M.L.J. 169.
(4) *Moh Seng Realty (Pte.) Ltd.* v. *H.L. Bannerji* [1985] 2 M.L.J. 341.

CIVIL APPEAL.

L.A.J. Smith for the appellant/plaintiff.
Giam Chin Toon for the respondents/defendants.

Cur. Adv. Vult.

Lai Kew Chai J.: The taxation of the three bills of costs arose out of the following proceedings in respect of which contentious business was done before the first day of December 1982 as well as on and after that date. Under a lease dated July 23, 1957 the plaintiff as lessee was granted a lease

over the premises known as 322-F Changi Road, Singapore. A dispute arose over the amount of the rent payable under the lease and whether, in all the circumstances, the lease was renewable. The plaintiff asserted that it was but the defendants contended otherwise and sought possession. On July 27, 1977 the plaintiff filed a writ of summons in the High Court for specific performance of the covenant to renew the lease. Two months later, for some unknown reason, the defendants commenced an action in the District Court claiming possession of the premises. By Originating Summons No. 416 of 1977 filed in the High Court in January 1978 the plaintiff obtained an order transferring the District Court action to the High Court and an order consolidating them for trial. Costs were ordered to be costs in the cause.

After the trial of the consolidated suits in the High Court, the learned trial Judge, Chua J., gave judgment for the defendants on August 3, 1982 holding that the plaintiff in paying less than the covenanted rent was not entitled to exercise the option to renew the lease which subject to the compliance of the conditions precedent was accepted by both parties to be a perpetually renewable lease. Against that judgment, an appeal was brought before the Court of Appeal. At the conclusion of the appeal, the Court of Appeal on April 15, 1983 allowed the plaintiff's appeal and ordered that costs in the Court of Appeal and in the court below be taxed and paid by the defendants. Following this, the plaintiff drew three bills of costs: Bill 952/84 related to the order granting consolidation; Bill No. 953/84 related to the High Court action; and Bill No. 954/84 related to the Court of Appeal proceedings.

The three bills of costs were drawn up on the basis of the new scale of costs in Appendix 1 to Order 59 which came into operation on December 1, 1982.

When the three bills of taxation came up for consideration before the learned Deputy Registrar, learned counsel for the defendants against whom the three bills of costs were raised, objected as a matter of principle and on a true and natural construction of Order 59 rule 31(1) of the Rules of Supreme Court, 1970 and the 1982 Appendix 1 effective December 1, 1982 that (a) Bill No. 952/84 (the Consolidation Bill) should not have been drawn separately; and (b) all three bills of costs should have been drawn on the old and new scales of costs in such way as to reflect the work done before or on and after December 1, 1982.

The learned Deputy Registrar did not accept counsel's submission on ground (a) above and decided that the plaintiffs were entitled to draw the Consolidation Bill separately relating to work done in Originating Summons No. 416 of 1977. There is no appeal against this decision.

On the other hand, the learned Deputy Registrar agreed with counsel on the second and more substantive issue and ordered that all three bills should be redrawn to reflect work done under the old and/or the new scales. Against this decision, the plaintiff has brought an appeal before me.

This appeal raises the question as to the scale of costs applicable in a taxation of costs which came up in August 1984 and the resolution of the question turns upon the construction of Order 59 rule 31(1) (hereafter referred to as "the Principal Rule") of The Rules of Supreme Court, 1970 (hereafter referred to as "the 1970 Rules") as amended by Rule 11 of the Rules of Supreme Court (Amendment) 1982 under which the Scale of Costs in Appendix 1 of the 1970 Rules was deleted and a new Scale of Costs was substituted therefor.

The 1970 Rules came into force on January 2, 1971: see *Government Gazette Subsidiary Legislation Supplement No. 4 of 1971* and dated January 2, 1971.

The principal rule was at all material times and is in the following terms:

> "Subject to the foregoing Rules and the following provisions of this Rule, the scale of costs contained in Appendix 1 to this Order, together with the notes and general provisions in that Appendix, shall apply to the taxation of all costs incurred in relation to contentious business done on or after the coming into force of these Rules."

Appendix 1 to Order 59 appeared as an appendix immediately after the said Order and was headed by the words "SCALE OF COSTS". The scale of costs was divided into ten parts in which were stated the costs items for work done at every stage of the contentious business done with Part X thereof making general provisions for discretionary costs, *etc.*

In March 1982 the Rules Committee made the Rules of Supreme Court (Amendment) 1982 (hereafter referred to as "the 1982 Rules) in exercise of their powers under section 80 of the Supreme Court of Judicature Act (Cap. 15). Under

Rule 1 thereof, it was enacted that the 1982 Rules "shall come into operation on December 1, 1982". One of the purposes of the 1982 Rules was to provide for increases in the costs items set out in the scale of costs. This matter was dealt with under Rule 11 of the 1982 Rules and Rule 11 so far as it is relevant was in the following terms:

"The Scale of Costs set out in Appendix 1 ... to Order 59 of the Principal Rules is deleted and the following Scale of Costs substituted therefor ..."

What immediately followed was the Scale of Costs, again divided into ten parts, and generally containing increases in the costs items therein.

It has to be noted at once that the scale of costs under the 1970 Rules was deleted and a new scale of costs was substituted by the 1982 Rules and that, most significantly, the Principal Rule remained completely unaltered, save and except for the substitution of the new scale of costs which was operative from December 1, 1982. Because the Principal Rule remained unamended, one has to look at it and construe it in the light of the amended Scale of Costs brought into force on December 1, 1982. In so doing, two propositions should be quite clear and beyond controversy; first, the new scale of costs on and after December 1, 1982 shall apply to the taxation of all costs; and secondly, the costs shall be all costs "incurred in relation to contentious business *done on or after the coming into force of these Rules*", (my emphasis), that is, in relation to contentious business done on or after January 2, 1971. It is beyond argument that the last two words "these Rules" appearing in the Principal Rule refer solely and exclusively to the 1970 Rules which came into force on January 2, 1971.

But the learned Deputy Registrar thought otherwise and expressed his views in the following terms:

"Order 59 rule 31(1) still requires bills (of costs) to be drawn up separately, to reflect work done on the old scale and work done on the new scale. The words 'Appendix 1' in rule 31(1) must be taken to refer to the 1982 Appendix 1 after December 1, 1982. That being the case, the old rule 31(1) must be accordingly read as the 1982 Rules. So the proper reading of rule 31(1) must be this:–

'Appendix 1 (1982) ... shall apply to taxation of all costs incurred ... done on or after the coming into operation of these Rules (1982).'

To read 'Appendix 1' as '1982 Appendix 1' and the 'Rules' as '1970 Rules' would result in an absurd interpretation."

The learned Deputy Registrar then went on to explain his decision in this way:

"Such an interpretation seems more reasonable as costs were incurred at the time when the work was done, not when the Court order was given. To hold otherwise and to apply the new scale of costs incurred under the old scale may impose an unfair pecuniary burden on the unsuccessful litigant and an unexpected windfall to the successful litigant. I do not think that this could be the intention of the drafters of the 1982 Rules."

It will be apparent on a consideration of the passages I have cited that the construction adopted by the learned Deputy Registrar (a) would involve substantial re-writing of the Principal Rule, the discarding of several express words and their substitution by other words which were thought to be more consonant with fairness; and (b) it would also impermissibly give consideration or undue consideration to the consequences of the contrary construction.

I think respectfully that it bears repetition that in the construction of any statutory enactment or subsidiary legislation or any other document, the cardinal rule for its construction is that it should be construed according to the intention as expressed in the legislation or document itself. If the words in the legislation or document are themselves precise and unambiguous, there is no room for any construction other than the one expounding those words in their ordinary and natural meanings. At the same time, it is equally clear that, in those circumstances, the language has to be given effect, whatever may be the consequences. For both propositions, see Lord Blackburn in *The Direct United States Cable Co. Ltd.* v. *The Anglo-American Telegraph Co. Ltd.*[1] and Tindal C.J. in *Warburton* v. *Loveland*[2].

In my view, it follows logically that on a true and natural construction of the Principal Rule, the new scale of costs will have to be applied on a taxation of costs coming up for consideration on and after December 1, 1982 to all contentious business done on or after January 2, 1971. I am not unaware that in some cases, which should not be many, there will be some pecuniary burden where the new scale of costs is applied retrospectively to contentious work done on and from January 2, 1971. But, as I had said, the words in the principal rule are so plain and unambiguous that they do not admit of any other interpretation.

I would have been content ordinarily to have parted from this judgment without any further

comment. But in deference to the carefully reasoned Grounds of Decision of the learned Deputy Registrar, who has much experience in these matters, I must consider (a) his view that reading the Principal Rule in the way I have done would "result in an absurd interpretation"; and (b) his consideration of the latest position in the United Kingdom and his conclusion as to the practical effect of the latest amendment to Appendix 2 effected on April 24, 1979 under which Parts 1 to Parts IX of the 1960 Appendix 2 were replaced by Appendix 2(a).

Admittedly, if an interpretation is absurd in the sense that it is incongruous, inappropriate, unreasonable or worse, in the sense it is ridiculous or silly, there are numerous reported cases in which courts had resorted to policy interpretations. The juridical basis in all such cases is the assumption, expressed or implied, that no legislature or parties to a private document could or would have intended such obviously unacceptable results. I do not think, with respect, that the interpretation I am ineluctably driven to adopt can be described as absurd. As I had said earlier, as the words used are precise and unambiguous, there is no room for any policy interpretation. I need only refer to two latest decisions of the Judicial Committee of the Privy Council which turned respectively on the construction of a statute and, coincidence of all coincidences, on the proviso of the lease in this very case: see *James Chia Shih Ching* v. *Law Society of Singapore*[3] and *Moh Seng Realty (Pte.) Ltd.* v. *H.L. Bannerji*[4] In the former case, with which I had some acquaintance, one could hardly imagine a more compelling case for a purposive interpretation; yet the final word on the inexorable effect of the letter of the law has been said. I must dutifully give effect to this approach towards statutory interpretation, leaving the obviously necessary reform as a result of that case to emanate from the legislature. It repays reminder that one must never cross the Rubicon into judicial activism. In the latter case, the Law Lords disapproved any attempt giving "no weight whatever" to the single word "proportionately" in the proviso of the clause. They said: "Giving this word its due weight it is in their Lordships' view clear that the clause is providing that the increase in the rent shall be proportional to the increase in the tax ..."

I now turn to the view of the learned Deputy Registrar on the practical effect of the amendments in the United Kingdom. The learned Deputy Registrar said:

> "The solution to the problem of which scale to adopt rests on the fact that as long as the bill is *lodged* on or after April 24, 1979, the new Appendix 2(a) will apply regardless of the fact that work may well have been done on the old scale. This works no injustice because the amendments of the new Appendix 2(a) merely renders major items as 'discretionary' for taxation purposes whereas under the 1960 scale the same items have a range of figures for taxation."

A couple of matters are clear on a consideration of the latest U.K. amendments. First, the scheme of the amendments drew a line and used the date of the lodgment of the bill as the critical date for the application of the amendments, whether or not contentious business was or had been done previous to the date of lodgement. Secondly, such a drafting device must necessarily involve some retrospective application of the new scale to pre-amendment work done. Thirdly, notwithstanding the rendering of major items as "discretionary", in practice it is not beyond the realm of probabilities that the costs as allowed after taxation under the discretionary items would reflect the increases in costs allowed by the 1979 amendments. Finally, the interpretation which I have adopted, as was implicitly recognised by the learned Deputy Registrar, will have the administrative merit of simplifying the process of drawing, reading and taxation of a contentious bill of costs; all the separate drawing of items under the old and new scales of costs, their reading, and arguments on principle and quantum under the two scales of costs are obviated.

The appeal of the plaintiff is therefore allowed with costs.

Appeal allowed.

Solicitors: *L.A.J. Smith; Wee Swee Teow & Co.*